

January 16, 2009

**REQUEST BY THE ATTORNEY GENERAL OF THE STATE OF UTAH
FOR PROPOSALS TO SERVE AS BOND COUNSEL, DISCLOSURE
COUNSEL, OR BOTH, FOR THE BOARD OF REGENTS OF THE STATE
OF UTAH AND UTAH STATE UNIVERSITY FOR THE ISSUANCE OF
REVENUE BONDS TO PROVIDE FUNDS FOR ONE OR MORE
BUILDINGS FOR UTAH STATE UNIVERSITY**

**PLEASE NOTE: WRITTEN PROPOSALS MUST BE RECEIVED NO LATER THAN
12:00 P.M. (Noon) ON MONDAY, JANUARY 26, 2009.**

To the Law Firm(s) or Attorney(s) Addressed:

The Attorney General is requesting proposals from attorneys and firms interested in serving as bond counsel, disclosure counsel, or both for the Board of Regents of the State of Utah ("Board") and Utah State University ("USU") for the issuance of revenue bonds to provide funds for (a) an early childhood education and research center ("Research Center") on the USU Logan campus, and (b) perhaps one additional building ("Vernal Building") on USU's campus in Vernal, Utah.

OVERVIEW

The Research Center. The 2008 General Session of the Utah Legislature enacted Utah Code Ann. § 63B-17-202(2), which authorizes the Board, on behalf of USU, to issue revenue bonds for the construction of an early childhood education research center. A copy of that statute is attached hereto and incorporated herein by reference as Exhibit A.

Subsection (2)(c) of Utah Code Ann. § 63B-17-202 provides that "the maximum amount of revenue bonds or other evidences of indebtedness authorized by this section is \$15,828,000, together with other amounts necessary to pay costs of issuance, pay capitalized interest, and fund any debt service reserve requirements."

The bonds authorized by Utah Code Ann. § 63B-17-202(2) for the Research Center will hereinafter be referred to as the “Bonds.”

The Vernal Building. The 2008 General Session of the Utah Legislature enacted Utah Code Ann. § 63B-17-301(4), which authorizes USU to “use donations to plan, design and construct a Vernal entrepreneurship and energy research center.” A copy of that statute is attached hereto and incorporated herein by reference as Exhibit A.

The Vernal Building will cost \$23.4 million. All but \$3.8 million of the cost of the Vernal Building has already been received from donors. One of the donors has also pledged the other \$3.8 million, and may be able to donate that amount by the time the funds are needed, but also might not be able to contribute all or even any of the \$3.8 million by that time. As a result, the Board and USU intend to ask the 2009 General Session of the Utah Legislature for authorize USU to issue \$3.8 million in revenue bonds in case that amount, or any lesser amount, is needed before the donor can contribute the full amount. If the Legislature authorizes the issuances of the bonds, the Board and USU may want to issue the bonds for the Vernal Building at the same time the bonds are issued for the Research Center.

Since it is unknown whether the Legislature will approve the bonds for the Vernal Building, and, if it does, the amount of bonds, if any, that will need to be issued, and when exactly the funds will be needed, the Attorney General will evaluate proposals received in response to this RFP only with respect to bonding for the Research Center. However, if the Legislature authorizes bonds for the Vernal Building, and it is determined at least some of those bonds will need to be issued, it is anticipated the Attorney General will request that bond counsel and disclosure counsel appointed under this RFP serve in those same capacities for any bonds issued for the Vernal Building. If the appointment to serve in those capacities for the bonds for the Vernal Building is acceptable to the firm(s) appointed under this RFP, the Attorney General will negotiate with the firm(s) appointed under this RFP with respect to the fees of the firm(s).

The Request of the Board and USU. The Board and USU have requested that the Attorney General appoint bond counsel and disclosure counsel pursuant to this RFP for the issuance of the Bonds, with the strong possibility additional bonds will be issued for the Vernal Building. The Attorney General has agreed to this request.

Schedule for Issuing the Bonds. After the Board meets in its regularly scheduled meetings in early January, the Board will not have regularly scheduled meetings again until March 26-27, 2009. These meetings will be held at Dixie College. While the 2009 General Session of the Utah Legislature is in session from January 26-March 12, 2009, the Board will be subject to meeting at the Board’s headquarters on an as-needed basis. The Board and USU would like to be able to present the Bonds to the Board for approval at the Board’s meetings at Dixie College in March, and be able to sell the bonds approximately 2-3 weeks thereafter, depending on whether bonds for the Vernal Building will be issued at the same time bonds for the Research Center are issued. That means the parameters resolution and other basic documents

may need to be prepared for presentation to the Board if the Board meets between January 26 and March 12, 2009. Bond counsel and disclosure counsel must therefore be prepared to commit the attorney time and other resources necessary to assist the Board and USU in meeting this goal.

NATURE OF THE APPOINTMENT

Bond counsel and disclosure counsel appointed under this RFP will provide the necessary services for the Board and USU to issue the Bonds. **However, whether disclosure counsel appointed under this request for proposals (“RFP”) performs any services on this bond issue will in part be determined by the wishes of the underwriter¹ for the bond issue. If the underwriter is willing to have disclosure appointed by the Attorney General under this RFP perform the disclosure work, the appointed disclosure counsel will do so. If, though, the underwriter wants to appoint underwriters’ counsel to do the disclosure work, the appointment of disclosure counsel under this RFP for the bond issue will likely be rescinded by the Attorney General in order to minimize the costs of issuance. The decision as to whether disclosure counsel appointed under this RFP provides services on this bond issue will be made solely by the Attorney General, in consultation with the Board and USU.**

APPOINTMENT BY ATTORNEY GENERAL

The Attorney General is appointing bond counsel and disclosure counsel under this RFP pursuant to Utah Code Ann. § 67-5-5 (West 2004). The procedures the Attorney General will follow in making the appointment are set forth in Utah Admin. Code R105-1.

In response to this RFP, the Attorney General will consider proposals from any firm. As used in this RFP, the term “firm” refers to any of the following: an individual attorney; two or more individual attorneys in association with each other; a law firm; two or more law firms in association with each other; or an individual attorney or two or more attorneys in association with a law firm or more than one law firm.

TERM OF APPOINTMENT

Bond counsel and disclosure counsel appointed under this RFP will serve in those capacities only for the issuance of the Bonds, unless the appointment is modified by the Attorney General. Such modification may include modification for the issuance of bonds for the Vernal Building, either together with the Bonds or in a separate bond issue.

RESPONSIBILITIES OF BOND COUNSEL

¹ The term “underwriter” is used to mean the entire underwriting team, even though more than one underwriter may be selected by USU for this project. See paragraph “4.” under “OTHER MATTERS FOR CONSIDERATION” below for information on the selection of the underwriter for this project.

Bond counsel will have the responsibilities, and perform the functions, usually associated with bond counsel in the issuance of revenue bonds. These services will likely include, but will not be limited to: development of necessary legal documentation; assistance with the issuance and sale of the bonds; issuance of an opinion as to the legality and validity of the bonds; issuance of an opinion regarding the tax-exempt status of the bonds; assisting, in a limited manner, in the preparation and development of an official statement for the bond issues; and attending to the details of the closings and printing of the bonds, as required. Bond counsel will also be expected to attend all meetings associated with the issuance of bonds.

Bond counsel must be prepared to commit the attorney time and other resources necessary to assist the Board and USU in meeting timetable goals set forth above in the last paragraph under “Overview.”

REQUIRED CONTENTS OF PROPOSALS TO SERVE AS BOND COUNSEL

Proposals must address the following criteria, which the Attorney General will use to select bond counsel:

- A. The ability of the firm to complete bonding transactions in a timely, professional manner. In evaluating this factor, the Attorney General will consider each of the following:
 - 1. The experience of the firm as bond counsel or disclosure counsel on general obligation bond and revenue bond transactions. (If the firm has recently submitted to us a proposal on another bond or note issue, the firm may refer to and incorporate any parts of that proposal into this proposal, updating information where necessary.)
 - 2. The professional resources available to assist with bond issues, and the names and qualifications of the principal attorney(s) who would be assigned to work on the bond issue. At least one attorney who will participate must be a member in good standing of the Utah State Bar, and at least one attorney must be listed among the attorneys in the “Municipal Bond Attorney's Section” of The Bond Buyers' Municipal Marketplace (the “Red Book”). The proposal must state which attorney(s) would actually be providing most of the services. The firm may associate with other firms or attorneys to provide services as bond counsel, but primary use of local attorneys will be a positive element in evaluating this factor.
 - 3. The availability of the firm to complete work on the bond issues in a timely and professional manner.

- B. The fee structure and estimated costs for the legal services provided for issuance of the Bonds (i.e., **ONLY for the bonds issued for the Research Center**). The proposal must state whether the firm would expect to receive the proposed fee or any part of the proposed fee, or to be reimbursed for costs incurred, in the event bonds are not issued. PREFERENCE WILL BE GIVEN FOR PROPOSED FEES BASED UPON A SET FEE, A FEE SCHEDULE BASED UPON THE DOLLAR AMOUNT OF BONDS ISSUED, HOURLY RATES WITH A CEILING, OR SOME OTHER METHOD BY WHICH THE ISSUER WILL BE ABLE TO ASCERTAIN AT THE OUTSET OF A BOND ISSUE WHAT THE LEGAL FEES FOR BOND COUNSEL WILL BE. The proposal must also state whether there would be a charge for future legal services incidental to the issuance of the bonds, and if so, what type of fee would be charged (e.g., hourly, no charge for first X number of hours, etc.).

PLEASE NOTE THAT NO FUNDS ARE AVAILABLE FROM THE STATE, THE ATTORNEY GENERAL'S OFFICE, THE BOARD, OR USU, FOR PAYMENT OF FEES OR COSTS IF BONDS ARE NOT ISSUED. The Attorney General, in consultation with the appropriate officials from the Board and USU, will allow for adjustments in bond counsel fees, if there are unusual or unforeseen circumstances that require significant additional services by bond counsel, and if funds are available from the bond issue.

- C. The number of appointments of, and the total fees received by, the firm in the last three (3) years for bonding work (including note projects) on behalf of the State, the State Board of Regents, any of the State's colleges or universities, or the Utah Higher Education Assistance Authority.

RESPONSIBILITIES OF DISCLOSURE COUNSEL

Disclosure counsel will have all the responsibilities, and will provide all the services, normally associated with disclosure counsel for revenue bond issues. These responsibilities and services will likely include, but will not be limited to: reviewing documentation developed by bond counsel and the financial advisor, and developing any additional necessary legal documentation; assisting with the issuance and sale of the bonds; issuing a 10b-5 opinion; assisting in the preparation, development, and review of an official statement for the bond issue; and performing such other duties as are normally and customarily required of disclosure counsel. Disclosure counsel will also be expected to attend all meetings they are required to attend that are associated with the bond issue.

Disclosure counsel must be prepared to commit the attorney time and other resources necessary to assist the Board and USU in meeting timetable goals set forth above in the last paragraph under “Overview.”

As stated above, whether the firm appointed as disclosure counsel under this RFP performs any services on this bond issue will in part be determined by the wishes of the underwriter for the bond issue. If the underwriter is willing to have the firm appointed by the Attorney General perform the disclosure work, the appointed disclosure counsel will do so. If the underwriter wants to appoint underwriters’ counsel to do the disclosure work, the appointment of disclosure counsel under this RFP for the bond issue will likely be rescinded by the Attorney General in order to keep down the costs of issuance, but the decision as to whether disclosure counsel also performs services on the bond issue will be made solely by the Attorney General.

REQUIRED CONTENTS OF PROPOSALS TO SERVE AS DISCLOSURE COUNSEL

Proposals must address the following criteria, which the Attorney General will use to select disclosure counsel:

- A. The ability of the firm to complete bonding transactions in a timely, professional manner. In evaluating this factor, the Attorney General will consider each of the following:
 - 1. The experience of the firm as bond counsel or disclosure counsel on general obligation bond and revenue bond transactions. (If the firm has recently submitted to us a proposal on another bond or note issue, the firm may refer to and incorporate any parts of that proposal into this proposal, updating information where necessary.)
 - 2. The professional resources available to assist with bond issues, and the names and qualifications of the principal attorney(s) who would be assigned to work on the bond issue. At least one attorney who will participate must be a member in good standing of the Utah State Bar, and at least one attorney must be listed among the attorneys in the “Municipal Bond Attorney's Section” of The Bond Buyers' Municipal Marketplace (the “Red Book”). The proposal must state which attorney(s) would actually be providing most of the services. The firm may associate with other firms or attorneys to provide services as disclosure counsel, but primary use of local attorneys will be a positive element in evaluating this factor.

3. The availability of the firm to complete work on the bond issues in a timely and professional manner.
- B. The fee structure and estimated costs for the legal services provided for issuance of the Bonds (i.e., **ONLY for the bonds issued for the Research Center**). The proposal must state whether the firm would expect to receive the proposed fee or any part of the proposed fee, or to be reimbursed for costs incurred, in the event bonds are not issued. PREFERENCE WILL BE GIVEN FOR PROPOSED FEES BASED UPON A SET FEE, A FEE SCHEDULE BASED UPON THE DOLLAR AMOUNT OF BONDS ISSUED, HOURLY RATES WITH A CEILING, OR SOME OTHER METHOD BY WHICH THE ISSUER WILL BE ABLE TO ASCERTAIN AT THE OUTSET OF A BOND ISSUE WHAT THE LEGAL FEES FOR DISCLOSURE COUNSEL WILL BE. The proposal must also state whether there would be a charge for future legal services incidental to the issuance of the bonds, and if so, what type of fee would be charged (e.g., hourly, no charge for first X number of hours, etc.).
- PLEASE NOTE THAT NO FUNDS ARE AVAILABLE FROM THE STATE, THE ATTORNEY GENERAL'S OFFICE, THE BOARD, OR USU, FOR PAYMENT OF FEES OR COSTS IF BONDS ARE NOT ISSUED. The Attorney General, in consultation with the appropriate officials from the Board and USU, will allow for adjustments in bond counsel fees, if there are unusual or unforeseen circumstances that require significant additional services by bond counsel, and if funds are available from the bond issue.
- C. The number of appointments of, and the total fees received by, the firm in the last three (3) years for bonding work (including note projects) on behalf of the State, the State Board of Regents, any of the State's colleges or universities, or the Utah Higher Education Assistance Authority.

OTHER MATTERS FOR CONSIDERATION

1. Firms may submit proposals to serve as bond counsel, as disclosure counsel, or both. If the fee for serving as both bond counsel and disclosure counsel would be different than just combining the fees submitted to serve as bond counsel and to serve as disclosure counsel separately, that should be indicated (e.g., \$20,000 for bond counsel, \$10,000 for disclosure counsel, and \$25,000 for both).

2. The Attorney General will make the determination, after consulting with officials for the Board and USU, whether to appoint different firms to serve as bond counsel and

January 16, 2009

Page 8

disclosure counsel, even if significant savings to the State could be obtained by appointing one firm to serve in both capacities.

3. Should a key attorney in a firm leave that firm during the period of the firm's appointment under this RFP, the Attorney General reserves the right, in the sole discretion of the Attorney General, to (a) have the appointment follow the attorney to the attorney's new firm, (b) leave the appointment with the firm originally appointed, or (c) appoint a new firm to fill the appointment for the remainder of the period.

4. Zions Bank Public Finance is Financial Advisor ("FA") to the Board and USU for these bond issues described above. The contact person for the FA is Brian Baker.

DEADLINE FOR SUBMITTING PROPOSALS

Written proposals must be received by the Utah Attorney General, c/o Bryce H. Pettey, Assistant Attorney General, 160 East 300 South, Fifth Floor, P. O. Box 140874, Salt Lake City, UT 84114-0874, **no later than 12:00 p.m. (Noon) on Monday, January 26, 2009.** A firm need submit only TWO (2) copies of the firm's proposal(s). The Attorney General reserves the right to accept or reject any or all proposals received after the due date, to accept or reject any or all proposals or any or all parts of a proposal, to waive minor defects or technicalities, and to request new proposals.

THE SELECTION PROCESS

In General

The Attorney General will select bond counsel and disclosure counsel based upon each of the criteria set forth above under the respective headings of "**REQUIRED CONTENTS OF PROPOSALS FOR BOND COUNSEL**" and "**REQUIRED CONTENTS OF PROPOSALS FOR DISCLOSURE COUNSEL**". All criteria set forth under those headings are important, but the criteria in paragraph A under each heading will be given the greatest weight. Each of the subparagraphs of each paragraph A will be given equal weight, and the subparagraphs will be evaluated in the order they appear in each paragraph A.

A firm must first be determined to be qualified under paragraph A to perform the services described for bond counsel or disclosure counsel. After passing that threshold, the factors in paragraphs B and C will be considered. The lowest proposed fees will be an important factor in selecting bond counsel and disclosure counsel, but other factors will also be considered, and the firm submitting the lowest proposed fee will not necessarily be the firm that is selected.

The Attorney General may seek input from appropriate State officials, Board officials, USU officials, and from other prior issuers who have had experience with firms submitting proposals. Such input may be considered by the Attorney General in making the selection.

Oral Presentations

After reviewing the written proposals, the Attorney General may select bond counsel, disclosure counsel, or both at that time; however, the Attorney General reserves the option of selecting several of the top applicants for bond counsel and several of the top applicants for disclosure counsel (selected on the basis of the written proposals) to make oral presentations to supplement the information in the written proposals. The Attorney General will decide whether oral presentations are needed or desirable, based upon factors brought to the Attorney General's attention by the Attorney General's staff and officials from the Board and USU, the amount of time available to hear such presentations, and the Attorney General's own schedule. The Attorney General may choose to have those oral presentations made to a panel of persons of the Attorney General's own choosing; if so, the Attorney General may or may not be a member of that panel. Information in those oral presentations, and any recommendations from a panel or panel members, may be considered by the Attorney General, along with the information in the written proposals, in making the selection.

If the Attorney General decides oral presentations are needed or desirable, the firms selected after initial review of the written proposals will be contacted by the Attorney General's office, and arrangements will be made to have the firms make their oral presentations. After these presentations, the Attorney General will select bond counsel and disclosure counsel..

NOTICE OF SELECTION

After the Attorney General has selected the firms, the selected firms will be notified. If a firm the Attorney General has selected is unable or unwilling to accept the appointment, the Attorney General will select another firm based upon the same criteria used to select the first firm. After firms have been selected that are willing to, and do, accept the appointments under this RFP for bond counsel and disclosure counsel, a general announcement will be made to the public. It is anticipated bond counsel and disclosure counsel will be named no later than Thursday, February 5, 2009. It is anticipated that interested persons can learn the name of the firm(s) appointed by calling (801) 366-0375 on Thursday, February 12, 2009.

NON-DISCLOSURE OF REASONS FOR SELECTING FIRM APPOINTED AND OF INFORMATION IN PROPOSALS; POSSIBLE REQUIREMENT TO DISCLOSE

Utah Admin. Code R105-1 provides that the reasons for selecting the firms that are appointed will not be made available to anyone. However, like all other State agencies, the Attorney General's office is subject to the Government Records Access and Management Act ("GRAMA") (Chapter 2, Title 63G, Utah Code Ann. (West Supp. 2008)). GRAMA makes most documents held by government entities in the State of Utah "public records," as defined in GRAMA. It is not yet clear just what effect GRAMA has upon proposals submitted in response to an RFP, such as this one. The Attorney General's office continues to analyze GRAMA for its effect on all written documents received by the Attorney General's office, including proposals

received in response to an RFP, but all persons submitting proposals are on notice that the Attorney General may not be able to keep the information in the proposals confidential. **A firm desiring to protect the confidentiality of all or part of the contents of its proposal may wish to consider the applicability of Utah Code Ann. § 63G-2-309.**

FURTHER INFORMATION

Should you have questions relating to the business aspects of the bond issue, please contact: Dr. Gregory L. Stauffer, Associate Commissioner for Finance and Facilities, at 801-321-7131 or gstauffer@utahsbr.edu; Fred R. Hunsaker, Interim Vice-President for Business and Finance of USU, at 435-797-1146 or fred.hunsaker@usu.edu; David Cowley, Associate Vice-President for Business and Finance of USU, at 435-797-1151 or dave.cowley@usu.edu; or Brian Baker of Zions Bank Public Finance, the FA for this bond issue, at 801-844-7381 or brian.baker@zionsbank.com. Firms should feel free – and indeed are encouraged – to contact Dr. Stauffer, Mr. Hunsaker, Mr. Cowley, or Mr. Baker directly with any questions they may have regarding the business aspects of the bond issues described above. There is no need for a firm to contact the Attorney General's office first before making inquiry of the Board, USU, or the FA.

Should you have questions relating to this RFP, or relating to the Attorney General's process of selecting bond counsel, please contact Bryce H. Pettey of the Utah Attorney General's Office (telephone at 801-366-0375; fax at 801-366-0378; or e-mail at bpettey@utah.gov).

EXHIBIT A

Relevant Bonding Statutes

Utah Code Ann. § 63B-17-202. Revenue bond authorizations - Board of Regents.

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(2) The Legislature intends that:

(a) the Board of Regents, on behalf of Utah State University, may issue, sell, and deliver revenue bonds or other evidences of indebtedness of Utah State University to borrow money on the credit, revenues, and reserves of the university, other than appropriations of the Legislature, to finance the cost of constructing an early childhood education research center;

(b) Utah State University use institutional funds as the primary revenue source for repayment of any obligation created under authority of this section;

(c) the maximum amount of revenue bonds or other evidences of indebtedness authorized by this section is \$15,828,000, together with other amounts necessary to pay costs of issuance, pay capitalized interest, and fund any debt service reserve requirements;

(d) the university may plan, design, and construct the early childhood education research center subject to the requirements of Section 63A-5-206; and

(e) the university may request state funds for operation and maintenance costs and capital improvements to the extent that the university is able to demonstrate to the Board of Regents that the facility meets approved academic and training purposes under Board of Regents policy R710.

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Utah Code Ann. § 63B-17-301. Authorizations to construct capital facilities using institutional or agency funds.

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(4) The Legislature intends that:

(a) Utah State University may, subject to the requirements of Section 63A-5-206, use donations to plan, design, and construct a Vernal entrepreneurship and energy research center;

(b) no state funds be used for any portion of this project; and

(c) the university may request state funds for operation and maintenance costs and capital improvements to the extent that the university is able to demonstrate to the Board of Regents that the facility meets approved academic and training purposes under Board of Regents policy R710.

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